



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2017-0914]**

**RIN 1625-AA00**

### **Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection for the levee and temporary protection wall located at the north end of the turning basin until permanent repairs can be effected. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2023. For the purposes of enforcement, actual notice will be used from July 11, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0914 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email scott.k.whalen@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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| CFR    | Code of Federal Regulations                        |
| COTP   | Captain of the Port Marine Safety Unit Port Arthur |
| DHS    | Department of Homeland Security                    |
| FR     | <i>Federal Register</i>                            |
| NPRM   | Notice of proposed rulemaking                      |
| §      | Section  |
| USACE  | U. S. Army Corps of Engineers                      |
| U.S.C. | United States Code                                 |

**II. Background Information and Regulatory History**

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.<sup>1</sup> That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. The U. S. Army Corps of Engineers (USACE) and the local drainage district initiated and completed emergency repairs to protect against potential storm surge during hurricane season. Permanent repairs to the flood protection wall are now necessary. They are extensive and expected to take approximately five to seven years. Damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking

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<sup>1</sup> See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG-2017-0797 (83 FR 4843).

(NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with repairs of the flood protection wall.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with the condition of the flood protection wall will be safety concern until permanent repairs can be effected. Potential damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The purpose of this rule is to ensure the safety of the surrounding community and to protect persons, vessels, and the environment during permanent repairs to the Taylor Bayou Turning Basin flood protection wall.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM published on April 16, 2018, which was in support of the proposed rule. We also updated the regulatory text of

this rule from the proposed rule in the NPRM to reflect the date of signature as the start of the enforcement period.

This rule establishes a temporary safety zone for navigable waters of Taylor Bayou Turning Basin north of latitude 29° 50'57.45"N until January 31, 2023. These coordinates are based on WGS 84. The duration of the zone is intended to ensure the safety of persons, vessels, and the environment until permanent repairs to the flood protection system are completed. This section will be enforced from July 11, 2018 through January 31, 2023. No person or vessel is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

As used in this section, a designated representative means a Coast Guard coxswain, officer or petty officer, or a federal, state or local officer designated by or assisting the COTP in the enforcement of the safety zone. To request permission to enter, contact COTP or a designated representative on VHF-FM channel 16, or contact Vessel Traffic Service (VTS) Port Arthur on VHF-FM channel 65A or by telephone at 409-719-5070. Those persons or vessels permitted to enter the safety zone must comply with all lawful directions given by the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the size, location, duration, and entities impacted by the safety zone. The safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29° 50’57.45”N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone that would prohibit persons and vessels from entering the upper reaches of Taylor Bayou Turning Basin unless authorized by the COTP or a designated representative. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–

01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.2.

2. Add §165.T08-0914 to read as follows:

§ 165.T08-0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

(a) Location. The following area is a safety zone: navigable waters of Taylor Bayou Turning Basin north of latitude 29° 50'57.45"N. These coordinates are based on WGS 84.

- (b) Definition. As used in this section, a designated representative means a



Coast Guard coxswain, officer or petty officer, or a federal, state or local officer designated by or assisting the Captain of the Port Marine Safety Unit Port Arthur (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in §165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative.

(2) To request permission to enter, contact COTP or a designated representative on VHF-FM channel 16, or contact Vessel Traffic Service (VTS) Port Arthur on VHF-FM channel 65A or by telephone at 409-719-5070. Those persons or vessels permitted to enter the safety zone must comply with all lawful directions given by the COTP or a designated representative.

(d) Enforcement date. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2023. For the purposes of enforcement, actual notice will be used from July 11, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: July 11, 2018

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JACQUELINE TWOMEY  
Captain, U.S. Coast Guard,  
Captain of the Port Marine Safety Unit Port Arthur.  
[FR Doc. 2018-15295 Filed: 7/17/2018 8:45 am; Publication Date: 7/18/2018]